

Part III - Administrative, Procedural, and Miscellaneous

Relief for Partnerships, REMICs, and Certain Other Entities Performing Any Acts by the Due Date in Effect Before the Enactment of the Surface Transportation Act

Notice 2017-71

PURPOSE

This notice provides that any act performed for the 2016 taxable year of a partnership, real estate mortgage investment conduit (REMIC), or certain other entities will be treated as timely for all purposes under the Internal Revenue Code (the Code), except with respect to interest under section 6601 of the Code, if the act would have been timely if the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (the Surface Transportation Act), Public Law 114–41, 129 Stat. 443 (2015), had not changed the due date for partnership returns.

Notice 2017-47, 2017-38 I.R.B. 232, is amplified, clarified, and superseded.

BACKGROUND

Section 2006 of the Surface Transportation Act amended section 6072 of the Code and changed the date by which a partnership must file its annual return with the Internal Revenue Service (IRS). The due date for filing the annual return of a partnership changed from the fifteenth day of the fourth month following the close of the taxable year (April 15 for calendar-year taxpayers) to the fifteenth day of the third month

following the close of the taxable year (March 15 for calendar-year taxpayers). The new due date applies to the returns of a partnership for taxable years beginning after December 31, 2015.

A REMIC is not a partnership, but under section 860F(e) it is generally treated as a partnership for purposes of subtitle F, "Procedure and Administration," of the Code. For example, under § 1.860F-4(b)(1) of the Income Tax Regulations, the due date and availability of any extension of time for filing a REMIC's annual return are determined as if the REMIC were a partnership. As a result, the new due date also applies to the returns of a REMIC for taxable years beginning after December 31, 2015.

The due date for the return of a bank with respect to a common trust fund, commonly filed on Form 1065, "U.S. Return of Partnership Income," is administratively tied to the due date of the return of a partnership under § 1.6032-1T of the Income Tax Regulations. Similarly, the annual return filed by a religious or apostolic association or corporation on Form 1065 is to be filed on the due date of a partnership return under § 1.6033-2T(e) of the Income Tax Regulations.

Partnerships filing Form 1065 and Form 1065-B, "U.S. Return of Income for Electing Large Partnerships," are affected by the Surface Transportation Act amendment. These partnerships may also file Form 8804, "Annual Return for Partnership Withholding Tax (Section 1446)," and Form 8805, "Foreign Partner's Information Statement of Section 1446 Withholding Tax," which are generally due to the IRS on the same date as the partnership's Form 1065 or 1065-B. Filers of Form 1065 must furnish their partners with Schedules K-1, "Partner's Share of Income, Deductions, Credits, etc.," by the due date of the Form 1065, and filers of Form 1065-B must furnish their partners with Schedules

K-1 by the first March 15 following the close of the partnership's taxable year. Filers of Form 8804 that are required to file Forms 8805 must also furnish their partners with their respective copies of Forms 8805 by the due date of the Form 8804. Some partnerships must also file additional returns, such as Form 5471, "Information Return of U.S. Persons With Respect to Certain Foreign Corporations," by the due date of the Form 1065 or 1065-B. A REMIC must file Form 1066, "U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return," by March 15.

A partnership can obtain a six-month extension of time to file Form 1065, 1065-B, or 8804, and a REMIC can obtain a six-month extension of time to file Form 1066, by filing Form 7004, "Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns," by the statutory due date of those returns. A partnership that receives an extension of time to file Form 1065 receives a concurrent extension of time to furnish its partners with Schedules K-1. Also, a partnership that receives an extension of time to file Form 8804 receives a concurrent extension of time to file Forms 8805 and to furnish respective copies of the Forms 8805 to its partners. The six-month extension may apply to additional returns that a partnership may be required to file by the due date of its Form 1065 or 1065-B, but it does not affect the due date for a partnership filing Form 1065-B to furnish its partners with Schedules K-1.

An entity that fails to timely meet its obligations to file and furnish returns is subject to penalties. An entity that fails to file Form 1065, 1065-B, 1066, or 8804 by the due date (with regard to extensions) is subject to penalty under section 6698 or 6651 of the Code. A partnership that fails to file Forms 8805 by the due date (with regard to extensions) is subject to penalty under section 6721. A partnership that fails to furnish

Schedules K-1 or the partner copies of Forms 8805 by the due date is subject to penalty under section 6722. A partnership that fails to file Form 5471 by the due date is subject to penalty under section 6038 or 6679. An entity that fails to file additional documents that it is required to file by the due date of its Form 1065, 1065-B, or 1066 may also be subject to other penalties.

In addition to the obligation to file returns with the IRS and furnish copies to recipients, an entity may be required to take various other actions, such as making elections, contributing to an employee pension plan, or paying tax, by the due date of its return, either with or without regard to any extension of time to file, depending upon the particular action. A nonexclusive list of examples of these actions is below:

- Section 860D(b)(1) provides that an entity that meets the requirements for a REMIC classification under section 860D(a) may elect to be treated as a REMIC for its first taxable year and that the election must be made on the entity's income tax return for its first taxable year. Section 1.860D-1(d)(1) of the Income Tax Regulations identifies that return as a timely Form 1066.
- Section 475(e) of the Code allows a dealer in commodities to elect mark-to-market accounting for commodities. Section 475(f) allows a similar election for traders in securities or commodities. To make an election under either section 475(e) or (f), Rev. Proc. 99-17, 1999-1 C.B. 503, provides that a taxpayer must file an election statement not later than the due date (without regard to extensions) of its income tax return for the taxable year immediately preceding the election year. The election statement must be attached to either the

taxpayer's original income tax return or, if applicable, to a request for an extension of time to file that return.

- Section 1.1092(b)-4T(f)(1) of the Income Tax Regulations generally provides that the election to establish one or more mixed straddle accounts (a mixed straddle election) for a taxable year must be made by the due date (without regard to extensions) of the taxpayer's income tax return for the immediately preceding taxable year. In order to make the mixed straddle election, a taxpayer must attach Form 6781, "Gains and Losses from Section 1256 Contracts and Straddles," to the taxpayer's income tax return (or request for an automatic extension) for the immediately preceding taxable year.
- Section 1295(b) of the Code permits a U.S. person who owns stock in a passive foreign investment company (PFIC) to elect to treat the PFIC as a qualified electing fund (QEF) by making the election on Form 8621, "Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund," filed with its income tax return on or before the due date (with regard to extensions) of its income tax return.
- Section 1.1296-1(h) of the Income Tax Regulations permits a U.S. person who owns marketable stock in a PFIC to elect to recognize gain or loss on the sale of the PFIC shares at the end of the year by making the election on Form 8621 and filing it with an original or superseding income tax return on or before the due date (with regard to extensions) of the income tax return for that year.
- Section 4980D of the Code and §§ 54.6011-2 and 54.6071-1(b)(1) of the Pension Excise Taxes Regulations require an employer who fails to meet certain group

health plan requirements under chapter 100 of the Code to file Form 8928, "Return of Certain Excise Taxes Under Chapter 43 of the Internal Revenue Code," and pay an excise tax on or before the due date of its income tax return (without regard to extensions).

- Section 404(a)(6) of the Code provides that an employer's contribution payment to an employee's benefit plan shall be deemed made on the last day of the preceding taxable year if the payment is on account of that taxable year and is made not later than the due date of the employer's income tax return for that taxable year (with regard to extensions).

Many entities took the acts for the first taxable year beginning after December 31, 2015, by the date previously required by section 6072. If not for the Surface Transportation Act, these acts would have been timely.

DISCUSSION

The IRS will treat acts of any (a) partnership, (b) REMIC, or (c) entity that may properly file a Form 1065—such as a bank (with respect to the return of a common trust fund), or a religious or apostolic association or corporation—and in fact filed a Form 1065, as timely for the first taxable year that began after December 31, 2015, and ended before January 1, 2017, if the entity took the act by the date that would have been timely under section 6072 before amendment by the Surface Transportation Act (April 18, 2017, for calendar-year taxpayers, because April 15 was a Saturday and April 17 was a legal holiday in the District of Columbia). However, the entity will be liable for any interest due under section 6601 from the date prescribed for payment until the date the payment was actually made.

An entity that has already been assessed a penalty for failure to timely file a return that is deemed timely filed under this notice can expect to receive a letter within the next several months notifying it that the penalty has been abated. For other acts deemed timely under this notice, such as elections, an entity should file its returns consistent with the treatment of the acts as being performed timely as provided by this notice, and need not take further action to obtain relief unless contacted by the IRS. For reconsideration of a penalty covered by this notice that has not been abated by February 28, 2018, contact the number listed in the letter that notified you of the penalty or call (800) 829-0115 and state that you are entitled to relief under Notice 2017-71. Taxpayers who qualify for relief under this notice will not be treated as having received a first-time abatement under the IRS's administrative penalty waiver program.

EFFECT ON OTHER DOCUMENTS

This notice amplifies, clarifies, and supersedes Notice 2017-47, 2017-38 I.R.B. 232.

DRAFTING INFORMATION

The principal author of this notice is Jonathan R. Black of the Office of the Associate Chief Counsel (Procedure and Administration). For further information regarding this notice contact Jonathan R. Black at (202) 317-6845 (not a toll-free number).